

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

DANIEL M. WOOLERY,	§	
	§	
Plaintiff,	§	
	§	Civil Action No. 3:21-CV-1728-D
VS.	§	
	§	
HESHEL PEERY, et. al.,	§	
	§	
Defendants.	§	

MEMORANDUM OPINION
AND ORDER

Defendant Michael L. Doty’s (“Doty’s”) December 20, 2021 motion to dismiss is granted in part and denied in part, and plaintiff Daniel M. Woolery’s (“Woolery’s”) December 3, 2021 motion for default judgment as to Doty is denied.

Doty moves to dismiss this action under Fed. R. Civ. P. 12(b)(5) and 4(m) based on Woolery’s failure to effect service of the summons and complaint on him. Woolery has not responded to Doty’s motion and therefore has failed to establish that he made proper service. Accordingly, the court grants Doty’s motion to the extent it is based on Rule 12(b)(5).

The court denies Doty’s motion to the extent it is based on Rule 4(m). Instead, the court will give Woolery 28 more days to effect service.

In support of his request for dismissal under Rule 4(m), Doty misleadingly quotes at ¶ 18 of his motion only part of the Rule, without ellipsis, omitting the part of the Rule that the court now emphasizes in bold font: Doty asserts that, under Rule 4(m), “[i]f a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own

after notice to the plaintiff—must dismiss the action **without prejudice against that defendant or order that service be made within a specified time.**” Doty made it seem that the court had only one option—to dismiss the action—which clearly is *not* correct. The court concludes in its discretion that Woolery should be given 28 days after the granting of Doty’s motion to effect proper service on Doty.

* * *

Accordingly, the court grants in part and denies in part Doty’s December 20, 2021 motion to dismiss, and it denies Woolery’s December 3, 2021 motion for default judgment. Woolery must effect proper service of the summons and complaint on Doty within 28 days of the date of this memorandum opinion and order.

SO ORDERED.

January 25, 2022.


SIDNEY A. FITZWATER
SENIOR JUDGE